An Opinion Respecting Persons in Common-law Relationships

OPINION ON ADOPTION

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1. Executive Summary

In Manitoba the only way to adopt a child is through an application to Court pursuant to *The Adoption Act*[1], ["the *Act*"]. Heterosexuals can apply individually to adopt any child. Gays and lesbians can also apply individually to adopt a child, but not the child or extended family member of their partner. Further, although married couples and common-law opposite-sex couples can apply jointly to adopt a child, gays and lesbians cannot apply jointly to adopt a child, even a child that they have been jointly parenting.

These provisions of the *Act* as they pertain to homosexuals would not survive a challenge under the *Canadian Charter of Rights and Freedoms*, ["the *Charter*"] because they deny citizens equal rights to adopt based solely upon sexual orientation. The Supreme Court of Canada has found sexual orientation to be an irrelevant personal characteristic which is analogous to the other characteristics set out in section 15 of the *Charter*. Restrictions on *Charter* rights may be justified under section 1 of the *Charter* if they constitute a reasonable limit in a free and democratic society. However, in my opinion there is no justification for this unequal treatment, particularly in light of the fact that the *Act* does permit some adoption by gays and lesbians. Further, the fact that some children are denied the benefit of having two legal parents is in conflict with the stated objectives of the *Act* to give paramount consideration in every respect to the child's best interests.

In Manitoba there is a vocal minority who strongly oppose adoption by gays and lesbians, based upon the conviction that children are better off with two parents, one of each gender. There are also strong advocates for the rights of gays and lesbians to have greater rights to adopt. These citizens believe just as strongly that it is in the best interests of the children to receive the love and support which many gay and lesbians are prepared to offer.

Many persons seem unaware that homosexuals are in fact able to adopt children in Manitoba, albeit only as individuals and not as a couple. Many are also unaware that there are more children in Manitoba wishing to be adopted than there are suitable parents, particularly for older or special needs children. Adoption applications by persons identifying themselves as homosexuals have been relatively recent, (within the past 4 or 5 years only), and quite infrequent (perhaps a half dozen applications). Many homosexual persons choose other ways of caring for children such as fostering, teaching, and volunteering with youth.

Other provinces with similar legislation to Manitoba have in recent years amended it in order to permit homosexuals to adopt on the same basis as heterosexuals. There has also been some case law which has changed the practice in certain provinces. Presently, gays and lesbians have received recognition for adoption purposes in B.C., Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia, and Newfoundland.

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[1] *The Adoption Act*, S.M. 1997, c. 47 – Chap. A2.

If Manitoba chooses to amend the *Act*, there are two legislative models which would comply with the *Charter*. The first would be to simply extend the current legislative model to fully include homosexuals. This would mean that a homosexual person living in a conjugal relationship of some permanence with their same-sex partner could apply jointly with that partner to adopt a child on the same basis as opposite-sex common-law partners. It would also mean that a homosexual person could apply to adopt the biological child or extended family member of their same-sex partner in the same way that a heterosexual person in a common-law relationship can apply.

Alternatively, Manitoba could enact a model which takes a new and broader approach to adoption. The legislation could be amended to permit any adult to apply to adopt a child, either individually or together with any other adult. This would mean that two persons would be free to adopt a child whether or not they were living in a conjugal relationship, and regardless of their relationship to one another. This is the route which B.C. and Newfoundland, for example, have chosen to follow. It is a considerably broader approach than is necessary in order to cure the *Charter* problem.

I recommend that the legislation be amended so as to extend the right to apply to adopt only as far as is necessary in order to ensure *Charter* compliance, namely, to permit homosexual persons to adopt on the same basis as heterosexual persons.

2. Introduction

The Honourable Gord Mackintosh, the Minister of Justice and Attorney General of the Province of Manitoba, retained the writer, and retired family court judge A. C. Hamilton, on June 19, 2001, pursuant to Terms of Reference which were released publicly and a copy of which are attached hereto as Schedule I.

We were retained to give advice on three issues respecting persons in common-law relationships, namely:

- adoption;
- conflict of interest and protection of the public interest; and
- legislation dealing with property interests;

and were requested to provide our opinion on these issues by December 31, 2001.

The Terms of Reference authorized us to consult with experts in relevant areas of the law, as well as with interested individuals or groups. We were specifically directed not to conduct public hearings.

We chose to commence our consultations by publishing in July, 2001, in urban and rural newspapers throughout the province, a notice inviting written submissions. Attached hereto as Schedule II is a copy of the notice and a list of the 56 newspapers in which it was placed. The notice permitted submissions to be sent on a confidential basis so that every person who was interested in the issue would feel free to respond if they so desired. Of the 37 written submissions received, only 3 requested that their names be kept confidential. A detailed listing of the submissions received, both from individuals and from organizations, is contained in Schedule III.

In addition to reviewing these written submissions, we also read the transcripts of the oral submissions before the Standing Committee on Law Amendments hearings conducted on June 18th and 21st, 2001, as well as copies of all written submissions provided to that Committee.

We then arranged for private consultations with 26 persons representing a wide variety of views on the issues including legal experts, representatives of various local and national organizations, and individual Manitobans. The great majority of consultations took place in person, in small groups of like-minded individuals. Several, particularly those involving national organizations with head offices in other provinces, involved telephone consultations. Attached as Schedule IV is a list of the persons with whom consultations were undertaken together with the name of their organizations where applicable.

The great majority of the submissions and consultations concerned all of the 3 areas that we were retained to study.

We were also authorized by our Terms of Reference to access relevant employees within the Department of Justice if we found that such access was helpful in providing our advice. We obtained from employees of the Manitoba Justice Department some

background information, some assistance in placing our notice, and assistance in setting up our office, computer, and telephone lines. Employees of the Departments of Justice in other Provinces and Territories were also helpful in providing information pertaining to their various legislative models.

At the conclusion of our research and consultations, we decided to provide two separate reports to government although it had been our initial intention to deliver a common report. It was once we began the analysis phase of our project that it became apparent that we saw the same issues through different eyes and we wished to give the government the benefit of our separate analyses and thinking on the three issues that we had been retained to consider. We sought and obtained government approval for this approach in October, 2001.

Also in October, 2001 we were requested by the Minister to provide our opinion on adoption as soon as possible, and separately from the other matters if they were not yet complete. Accordingly, I now enclose the materials relating to my opinion on the adoption issues. It is anticipated that my report on the balance of issues in the Terms of Reference will follow at the end of the year as originally requested.

The Terms of Reference require that the following two questions be addressed in relation to the adoption issue:

1. **As they apply to adoption applications by same-sex common-law couples, are the provisions in Manitoba's *Adoption Act* likely to survive a Charter challenge?**

2. **If Manitoba's *Adoption Act* is not likely to survive a Charter challenge, review legislative approaches in other Canadian jurisdictions, identify models (legislative approaches) which would comply with the Charter, and recommend a preferred approach.**

With respect to the first question, section 3 of my report describes in detail the current provisions of Manitoba's *Adoption Act* as it applies to adoption applications by same-sex common-law couples. Section 4 provides more information on adoption in Manitoba as gathered through our process of submissions and consultations. Section 5 analyzes the provisions in the *Act* relating to same-sex adoption in relation to the *Charter*, and answers the question as to whether they would be likely to survive a *Charter* challenge.

With respect to the second question, section 6 of my report reviews the legislative approaches in other Canadian jurisdictions and section 7 contains my analysis of which legislative approaches I believe would comply with the *Charter* and which would be recommended. A summary of my recommendations are set out in section 8.

3. Adoption Law in Manitoba

The *Act* sets out the law pertaining to adoption in the Province of Manitoba. A child may only be adopted if a judge of the Court of Queen's Bench grants an order of adoption pursuant to the *Act*. After an adoption order is granted, the child's registration of birth is redrafted and resubmitted to Vital Statistics. An unmarried mother is permitted to leave the space for the father's name blank. Otherwise, where two parents are named in a birth certificate they must be one of each gender: a "mother" (female) and "father" (male). It is not possible to register a child with 2 mothers or 2 fathers pursuant to *The Vital Statistics Act* regulations.

A child, once adopted, ceases to be the child of their previous parent(s) and becomes the child of their adoptive parent(s) for all purposes in law. This includes the right of the child:

- to receive a portion of the parent's estate if the parent dies intestate;
- to receive a portion of the parent's estate if they have been dependant upon that parent and money is needed for their continued support; and
- to secure support from the parent during that parent's lifetime without having to prove a relationship of *loco parentis* with the parent, that is, without having to prove that the person has been actively parenting them.

Adoption also creates rights for the parent(s):

- to secure medical attention for the child;
- to make decisions for the child including those related to medical, religious and educational concerns;
- to travel with the child and determine their place of residence;
- to seek custody of the child in the event of a separation from the other parent, if that is in the child's best interests; and
- to seek access to the child in the event of a separation from the other parent, without having to prove that exceptional circumstances exist.

There are 7 kinds of adoptions set out in the *Act*: adoption of a permanent ward, private adoption, inter-country adoption, de facto adoption, extended family adoption, adoption by a person who has married the child's parent, and adoption of an adult.

There are two ways to adopt: as a couple jointly, or singly as an individual. In general, a single individual, whether heterosexual or homosexual, can apply to adopt a permanent ward, a child through private adoption, a child from another country, or another adult. However, a single individual can only apply to adopt a family member of their partner, including a child of that partner, if the couple is heterosexual. Further, joint applications for adoption are restricted to heterosexual couples, even if the homosexual couple has been parenting a child jointly and are seeking to formalize that relationship. Only one of the two homosexual partners can apply to adopt the child.

The specific provisions of the *Act* regarding whom may adopt and when are set out in 7 separate Divisions, each one dealing with a different kind of adoption.

Division 1 -Adoption of a Permanent Ward

This Division applies to the adoption of a child who is a permanent ward of Child and Family Services, usually because his or her parent(s) were unable or unwilling to care for the child properly. Sometimes the adopting parent(s) are unknown to the child, and sometimes they have been acting as the foster parent(s) to the child.[2]

The following persons are permitted to apply for adoption of a child who is a permanent ward of Child and Family Services:

(a) a husband and wife;
(b) a man and a woman who are not married but are cohabiting as spouses; or
(c) a single adult.[3]

The *Act* provides that an application to court for an adoption order under this Division must include, where applicable, "the marriage certificate of married applicants or the prescribed declaration of commitment of the cohabiting couple".[4] Only opposite-sex couples can marry in Canada. While same-sex partners can cohabit, the declaration of commitment requires the couple to declare that they have been living together as "husband and wife"[5].

Therefore, while a gay or lesbian person can apply as a single adult to adopt a permanent ward, he or she cannot apply jointly with his or her same-sex partner to adopt a permanent ward. This right to apply jointly is specifically reserved for opposite-sex couples.

Division 2 - Private Adoption

This Division applies to children who are surrendered by their parent(s), usually at birth, to be adopted by a person or persons who are otherwise unknown to the child.

This section says nothing about joint applicants having to be either married or opposite-sex cohabiting couples. However, an application to court for an adoption order under this Division must include, where applicable, "the marriage certificate of married applicants or the prescribed declaration of commitment of the cohabiting couple".[6] Married joint applicants are always opposite-sex couples because only they can marry in Canada. Cohabiting joint applicants are also opposite-sex couples because the form requires that they declare that they have been living as "husband and wife". Furthermore, it is not currently possible to register a child with 2 mothers or 2 fathers. Therefore, while a gay or lesbian person can apply as a single adult to adopt a child privately, the right to apply jointly to adopt such a child is reserved for opposite-sex couples only.

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[2] *The Adoption Act*, S.M. 1997, c. 47 – Chap. A2, section 41.
[3] Ibid, section 36.
[4] Ibid, section 50(h).
[5] *The Adoption Act*, Adoption Regulation A2 – 19/99, form AA – 14.
[6] *The Adoption Act*, S.M. 1997, c. 47 – Chap. A2, section 67(h).

Division 3 – Inter-Country Adoption
This Division applies to the adoption of children from countries other than Canada. In such case, the provisions of the *Act* in Division 1 apply, which means that joint applications are restricted to heterosexual couples.[7] Therefore, while a gay or lesbian person can apply as a single adult to adopt a child from another country, he or she cannot apply jointly with his or her same-sex partner to adopt such a child. This right to apply jointly is specifically reserved for opposite-sex couples.

Division 4 - De Facto Adoption
De facto adoption occurs where a person or a couple has been caring for and maintaining a child for at least two consecutive years and wishes to adopt that child. An application for a de facto adoption can be made by a single person or jointly, either by a husband and wife or by "a man and woman who are not married but are cohabiting as spouses".[8]

Therefore, while a gay or lesbian person can apply as a single adult to adopt a child that he or she has been parenting for at least 2 years, he or she cannot apply jointly with his or her same-sex partner to adopt such a child when the couple has been parenting the child jointly. This right of joint application is specifically reserved for opposite-sex couples.

Division 5 – Extended Family Adoption
This Division applies to the adoption of a child by a member or members of the child's extended family where the child has resided with them for at least 6 months.[9]

The definition of "extended family" includes the child's grandparents, siblings, aunts, uncles, and cousins, the spouse of such persons, and "an unmarried adult who is cohabiting in a relationship of some permanence" with any of those persons, so long as they are "of the opposite-sex".[10] Also, an application under this Division must include the marriage certificate of a married applicant or the prescribed declaration of commitment of the cohabiting couple.[11] Therefore, the right to apply under this Division for an extended family adoption excludes joint applications by same-sex couples and also excludes homosexuals from applying individually when their only relationship to the child is through their same-sex common-law partner.

Division 6 – Adoption by Person who has Married the Child's Parent
This Division applies to the adoption of the child of a person that the applicant is either married to, or is living with, where that child is being cared for by both the applicant and the child's parent. There is no minimum time that the applicants must have been caring for the child. Generally, this section is used by couples who are parenting the biological child of one of them and they wish the other parent to adopt the child because the child's other biological parent is unable or unwilling to parent.

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[7] Ibid, section 71(2).
[8] Ibid, section 73(1).
[9] Ibid, section 83.
[10] Ibid, section 1.
[11] Ibid, section 85.

The *Act* specifically confines an application to either a married spouse or an opposite-sex common-law partner[12]. Further, the application must include either a copy of the marriage certificate or declaration of commitment[13] which requires the couple to declare that they have been living as "husband and wife". Accordingly, same-sex couples are excluded from applying to adopt their partner's child.

Division 7 – Adoption of an Adult

This Division applies to the adoption of adults. This section says nothing about joint applicants having to be either married or opposite-sex cohabiting couples. However, an application to court for an adoption order under this Division must include, where applicable, "the marriage certificate of married applicants or the prescribed declaration of commitment of the cohabiting couple".[14] Again, since the declaration form requires the couple to declare that they have been living as "husband and wife", and marriage is only legal between a man and a woman, joint adoptions of adults are reserved for opposite-sex couples only.

In summary, there is no absolute prohibition on adoption by gays and lesbians in Manitoba. They are free to apply to adopt as single individuals, so long as they do not wish to adopt their partner's child or extended family member. There are no such restrictions on heterosexuals who may apply to adopt any child, either as an individual or as a couple, even if they are not married to their partner, but are simply living together.

[12] Ibid, section 88.
[13] Ibid, section 90.
[14] Ibid, section 96.

4. Submissions and Consultations

We conducted private consultations and received written submissions from a variety of individuals expressing their personal views on adoption or the policies on adoption of local and national organizations.

During the course of reviewing the submissions and conducting the consultations we learned that there is a vocal minority who are strongly opposed to gays and lesbians being given the right to adopt. These persons were generally motivated by a sincere belief that children were better off with two parents, one of each gender, rather than by a desire to discriminate against other citizens on the basis of their sexual orientation. These opinions were rooted in deeply held beliefs about the nature of family and marriage and often were informed by religious convictions as well. For example, one submission quoted Genesis stating that God created man in his own image, male and female, and "their names were Adam and Eve, not Adam and Steve". While these submissions were in the minority, they nevertheless reflected strongly held views. Indeed there was often discomfort expressed with the current state of the law permitting any adoption at all by homosexuals. Generally this was felt to erode traditional values and particularly the sanctity of marriage as the "cornerstone of society".

We learned that there are also strong advocates for the rights of gays and lesbians to have greater rights to adopt. Often these are homosexual persons who themselves are either parenting, or wish to be able to have that opportunity in future. Their conviction that this is in the best interests of children is just as firmly held as with those opposing. Many described the difficulties inherent in parenting a child with whom one is prevented from having a legal relationship including arranging for medical care, education, and even simple things like signing permission slips, as well as difficulty traveling. It was pointed out that without the legal relationship, the child was not protected in the event of the death of the "parent" or the separation of the "parent" from the child's biological parent.

Amongst those who supported adoption rights for homosexuals, some supported extending the right to jointly apply to adopt a child to *any* two adults, regardless of whether they are cohabiting together in a conjugal relationship. They admitted that there isn't presently much demand for this type of adoption, but they felt that it would be more "inclusive" to extend the model. Others felt that the present model worked well, so long as it was fully extended to homosexuals in all circumstances.

Each person consulted with was asked whether they would favour a public registration system for common-law relationships, or at least for same-sex common-law relationships given that these couples cannot marry in Canada. In the context of adoption, it was pointed out that such a system would be irrelevant. The relationship between joint applicants is thoroughly screened for permanence, health and commitment whether the couple is married or living common-law. Representatives of Child and Family Services advised that it would "make no difference to us" whether the relationship was registered.

In addition to hearing a variety of opinions about whether, how, and when adoptions by homosexuals should be permitted, we also gathered some practical information which was of interest and assistance.

We learned that Winnipeg Child and Family Services handle the great majority of the adoptions in the Province, some 104 adoptions last year. Representatives of that agency advised that adoption practice has changed substantially in recent years. Historically gays and lesbians simply did not apply to adopt children. Occasionally in the past 20 years, a single man or woman would apply to adopt in circumstances where there might be a strong suspicion that they were gay or lesbian. However, they certainly did not identify their sexual orientation, and if they were involved in a same-sex partnership, there was no evidence of this during the interviews or home visits. It has only been within the past 4 to 5 years that a few gays and lesbians, perhaps half a dozen, have come forward to apply to adopt, and have made full disclosure about their sexual orientation including any involvement in a same-sex relationship. In such circumstances the Winnipeg Child and Family Services Adoption Program staff have evaluated the permanence and health of that relationship in the same way they would an opposite-sex common-law relationship (even though only one of the couple was going to be permitted to adopt). They have investigated the extent to which the applicant would be capable of assisting the child in coping with discrimination which might result from having parents of the same gender, in the same way that they would evaluate an applicant who was proposing a cross-cultural adoption or proposing to adopt a child from a racial minority.

We also learned that there is a waiting list of special needs children wishing to be adopted, particularly children who are permanent wards. Winnipeg Child and Family Services said that they would welcome more prospective adoptive parents to assist with the placement of such children. The Children's Advocate advised that they deal with children every day who are unable to get an adoption placement quickly enough, or at all, again, particularly children with special needs or who are slightly older. The Children's Advocate noted that gays and lesbians are often well placed to assist these children as they themselves may have faced challenges similar to those experienced by the children in terms of discrimination or other difficulties.

We spoke to a representative from Adoption Options (Manitoba) Inc. which facilitates about 20 adoptions in Manitoba per year. In that agency the general approach involves a birth mother placing her child with the parents of her choice and very often having some level of continuing contact with the adoptive parents and/or the child pursuant to an "openness agreement". We learned that the agency has never had a gay or lesbian couple ask to be placed on the prospective parents list, and has never had a birth mother request gay or lesbian parents for placement of her child.

We learned that many gays and lesbians in Manitoba who are unable to parent choose other ways of caring for children such as fostering, teaching, and volunteering with youth. And we learned that, despite the current restrictions on adopting, many gays and lesbians were in fact jointly parenting children, sometimes from prior relationships and sometimes conceived through assisted insemination or surrogacy. Two gay men who are

very active in the gay and lesbian community in Winnipeg estimated that 1 out of 10 gay male couples and 4 out of 10 lesbian couples were currently actively parenting.

We were unable to obtain statistics on the number of homosexuals who would like to adopt, but are prevented from doing so by the current legislation. A Winnipeg agency providing resources to gays and lesbians said that they hear about the problem of gays and lesbians wishing they could adopt "all the time." The same men who estimated how many homosexuals are currently parenting, anticipated that if the legislation changed, these numbers would increase substantially.

A Director of Research for a national advocacy group informed us that Statistics Canada was just starting to collect information about how many Canadians were living in same-sex relationships. He advised that certain samplings had been done from which it could be extrapolated that approximately 1% to 2% of Canadians are currently living in same-sex relationships. If those numbers are accurate for Manitoba, then there are perhaps five to ten thousand gay and lesbian couples who are cohabiting in relationships who could potentially utilize new provisions to adopt a child jointly, or to adopt the child of their partner.

5. The Impact of the *Charter of Rights*

In determining whether the *Act* would survive a *Charter* challenge, there is a two stage inquiry. Firstly, it must be determined whether the impugned legislation breaches the equality rights set out in section 15(1) of the *Charter*.

Section 15(1) of the *Charter* provides:

> *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based upon race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

The person who challenges the legislation has the onus of proving the breach of s. 15(1). If this breach is proven, then the onus switches to the government to prove, pursuant to section 1 of the *Charter*, that the impugned legislation should be saved.

Section 1 of the *Charter* provides:

> *The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

I will examine firstly whether the provisions of the *Act* which exclude homosexuals from the right to apply to adopt a child offend section 15(1) of the *Charter* and, if I conclude that they do so offend section 15(1), then I will examine whether they can nonetheless be saved by the provisions of section 1 of the *Charter*.

The essential requirements of a s. 15(1) analysis are satisfied by two inquiries:

1. whether there is a distinction which results in the denial of equal benefit of the law; and
2. whether the denial constitutes discrimination on the basis of an enumerated or analogous ground.

Although s. 15(1) does not specifically include sexual orientation as a ground of discrimination, it is well-settled law that sexual orientation is included under s. 15(1) of the *Charter* as an "analogous" ground. In the recent Supreme Court of Canada case of *M. v H*, a lesbian woman who had been in a same-sex relationship successfully argued that her inability to access the benefit of a legislative spousal support scheme post-separation (which opposite sex common-law couples could access), was a breach of her equality rights. As stated by the Court:

> *This differential treatment is on the basis of a personal characteristic, namely sexual orientation, that, in previous jurisprudence, has been found to be analogous to those characteristics specifically enumerated in s. 15(1).*[15]

[15] *M. v. H.* [1999] 2 S.C.R. 3 (S.C.C.) at paragraph 2.

With respect to the first inquiry, it is clear that the *Act* does draw a distinction which results in the denial of equal benefit of the law. It does this by specifically according rights to individual members of unmarried cohabiting opposite-sex couples, which by omission it fails to accord to individual members of cohabiting same-sex couples.

Firstly, the *Act* allows a man and a woman to apply jointly to adopt a child where the relationship has a degree of permanence and is conjugal. Since gay and lesbian individuals are capable of being involved in conjugal relationships of some permanence, the distinction of relevance is between persons in an opposite-sex, conjugal relationship of some permanence and persons in a same-sex, conjugal relationship of some permanence. Therefore the legislation draws a formal distinction between persons on the basis of a personal characteristic, namely, sexual orientation.

Further, the *Act* allows a person to apply to adopt a child who is the biological or adopted child of their opposite-sex partner, or who is a member of the extended family of their opposite-sex partner, in circumstances where the applicant has been parenting that child for a defined period of time. Since gay and lesbian individuals are capable of being involved in cohabitation relationships where they are parenting children, the distinction is between step-parents who are homosexual and those who are heterosexual. Again, the legislation draws a formal distinction between persons on the basis of a personal characteristic, namely sexual orientation.

With respect to the second inquiry, it is the opinion of the writer that this denial of equal benefits constitutes discrimination on the basis of an analogous ground, namely, sexual orientation. In reaching this conclusion I am aware of the requirement, as stated by the Supreme Court most recently in *M. v. H.*, that the inquiry is to be undertaken in a purposive and contextual manner. The focus must be on whether the differential treatment withholds a benefit in a manner that reflects the stereotypical application of personal or group characteristics or which otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy.

The *Act* creates a distinction which withholds a benefit from gay and lesbian individuals, namely the right to apply to adopt children. The legislation reflects a stereotypical application of presumed characteristics and fails to take into account the applicants' actual situation. Being in a same-sex relationship does not mean that it is impermanent or non-conjugal. The legislation implies that same-sex couples are incapable of forming intimate relationships of some permanence as compared to opposite-sex couples. Further, possessing a homosexual sexual orientation does not mean that the person lacks parenting skills. The legislation implies that homosexuals are incapable of providing the necessary love and support to adequately parent children, as compared to heterosexual persons, without regard to their actual living circumstances or personal characteristics.

Furthermore, gays and lesbians have been the subject of discrimination in our society. As stated by the Supreme Court in *M v. H*:.

> *Sexual orientation is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs . . . [and] gays, lesbians, and*

> *bisexuals, whether as individuals or couples, form an identifiable minority who have suffered and continue to suffer serious social, political and economic disadvantage.* [16]

Therefore, in my opinion a court would unquestionably find that the sections of the *Act* which deny homosexual persons the same rights to apply to adopt as heterosexual persons infringe s. 15(1) of the *Charter*.

A court would then necessarily move to the second stage of a Charter inquiry, namely, a consideration of whether the infringement is justified under s. 1 of the Charter. At this stage the onus shifts to the government to justify the legislation and prove that it is indeed a reasonable limit pursuant to s. 1 of the *Charter*.

In determining whether an infringement is justified one must ascertain the objectives of the legislation and whether the exclusion of same-sex couples from certain aspects of the adoption regime furthers those objectives. The purpose of the *Act* is to "provide for new and permanent family ties through adoption giving paramount consideration in every respect to the child's best interests"[17]. In my opinion, those objectives are not furthered by the exclusion of same-sex couples from full participation in the adoption regime. If anything, these goals are undermined by this exclusion.

Indeed, there is no rational connection between this goal and a prohibition against adoption by homosexual persons in certain circumstances. The *Act* has a process which provides for many safeguards to ensure that proposed adoptive parents will be able to meet the physical, psychological, emotional, and intellectual needs of the child that they propose to adopt. To the extent that a homosexual parent may be able to meet these needs, it is in a child's best interests that the parent be permitted to apply to adopt.

Finally, and most importantly, there is no absolute prohibition in the *Act* against adoption by gays and lesbians who can and do apply to adopt as individuals. In this context it is inconceivable that the government would be able to demonstrate that prohibiting joint adoption by homosexual couples is reasonable under section 1, while at the same time not prohibiting individual adoption by gays and lesbians. The effect of the legislation is that homosexuals are only prohibited from adopting in circumstances which would deny a child the right to two legal parents to care for them and support them. This is not in the best interests of children.

There are four reported cases which have been decided in Canadian courts which have considered the issue of adoption rights by homosexual persons. The first of these is the case of *K (re)* from Ontario which was decided in 1995[18]. In that case four lesbian couples made a series of joint applications for step-parent adoptions. At that time under section 136(1) of the Ontario Act only a spouse could apply in Ontario to adopt the biological child of their partner. Spouse was defined in the Act to mean persons of the

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[16] *M* v. *H* [1999] 2 S.C.R. 3 (S.C.C.) at paragraph 64.
[17] *The Adoption Act*, S..M. 1997, c. 47 – Chap. A2, section 2.
[18] *K (Re)* (1995), 23 O. R. (3d) 679 (Ont. Prov. Div).

opposite sex. The Court found the definition of spouse to be unconstitutional. The court reasoned that the right to adopt is a benefit of the law and that the denial of this right is based upon sexual orientation which is an analogous ground of discrimination under the *Charter*. The Ontario Act at that time permitted individual applications for adoption by homosexuals while denying joint applications by homosexuals in conjugal relationships. The court concluded, "I cannot imagine a more blatant example of discrimination"[19]. The court noted that the overall goal of the legislation was to promote the best interests of children within the family which was not served by an absolute prohibition against adoption by homosexual couples. The court concluded that the infringement of s. 15(1) was not justified under s. 1 of the *Charter* and "read in" to the definition of spouse appropriate wording to make it applicable to same-sex common-law couples.

In the case of *C.E.G. (No. 1) (Re)*[20] an Ontario court considered the same issue 3 months later. Again a lesbian applicant wished to adopt the child of her partner and challenged the definition of spouse in the Ontario Family Services Act. In allowing the application and modifying the definition of spouse to include same-sex couples the court relied upon and adopted the reasons in *K (Re)*.

In 1996, Alberta's legislation was challenged by 2 lesbian woman in the case of *A (Re)*[21]. Again they wished to adopt the biological children of their partners. The court was initially asked to determine whether the definition of spouse in the Alberta Act was meant to include same-sex couples and, if not, whether that violated the *Charter*. The Attorney General initially opposed the applications but subsequently withdrew the opposition when the government announced that it intended to amend the Child Welfare Act. The amendment replaced the term "spouse" with "step-parent" in order to permit, inter alia, adoptions between same-sex couples. Using the standard rules of statutory interpretation, the court concluded that the legislature intended to permit same sex adoptions by replacing "spouse" with "step-parent". The court found it unnecessary to consider the *Charter* issue but did consider in some detail, and in a positive way, the ability of homosexuals to parent.

An instructive part of this case is that the court ordered the government to pay the solicitor and client costs of the applicants, even though it had ultimately withdrawn its opposition. It was reported that these costs amounted to some $300,000.00.

Finally in June, 2001 the Nova Scotia Supreme Court considered the issue of same-sex adoption rights in the case of *Nova Scotia (Birth Registration No. 1999-02-004200) (Re)*[22]. Again it involved an application by two lesbian women, one of whom sought to adopt the child of her partner but was prevented from doing so under the Nova Scotia Child and Family Services Act. That Act only permitted married couples to apply jointly to adopt. The Court concluded that the law violated s. 15(1) of the *Charter*. The court

[19] Ibid, at page 19.
[20] *C.E.G. (No. 1) (Re)* [1995] O.J. No. 4072 (Ont. Gen. Div.).
[21] *A (Re)* [1999] A.J. No. 1349 (Alta. Q.B.).
[22] *Nova Scotia (Birth Registration No. 1999-02-004200) (Re)* [2001] N.S.J. No. 261 (N.S.S.C. Fam. Div) decided June 28, 2001.

found that it was not saved by section 1 as the government, who did not defend the legislation, had not discharged its onus to prove that it was a reasonable limit. The women were permitted to proceed with the adoption.

None of these court cases would be binding upon a Manitoba court. However, in my opinion a Manitoba court would necessarily be drawn to the same conclusion in relation to our *Act*, using the same reasoning as these other Canadian courts. Therefore, it is my opinion that a court would declare the existing provisions of the *Act* unconstitutional to the extent that they exclude homosexual persons from the right to apply to adopt children on the same basis as heterosexual persons.

The only option open to the government should it wish to preserve the existing sections of the *Act* would be to use the notwithstanding clause in section 33 of the *Charter*. This clause states that the legislature may expressly declare in an Act of the legislature that a provision of an Act of the legislature shall operate notwithstanding s. 15(1) of the *Charter*. The declaration would be in effect for a maximum of 5 years at which point it would have to be re-enacted. This is a provision which would be extremely controversial and would, in the opinion of the writer, require a far more pressing need than the preservation of the impugned provisions in our *Adoption Act*. The use of this provision is not recommended for consideration.

6. Legislative Approaches in Other Jurisdictions

The following is a description of the state of the law in the other provinces and territories in Canada:

British Columbia
In 1996, B.C. amended its *Adoption Act* to permit same-sex adoption, either by the partner of a parent, or in respect of the adoption of an unrelated child. It did so in neutral terms. The *Act* simply says that "a child may be placed for adoption with one adult or two adults jointly"[23] without specifying either gender or marital status.

Alberta
Alberta amended its *Child Welfare Act* in May of 1999 to allow for step-parent adoptions by the gay or lesbian partner of a biological parent[24]. This amendment was in response to a court challenge by two lesbian partners of biological mothers who argued that the legislation, which permitted only spouses to apply to adopt the child of their partner, was unconstitutional. Prior to the case being heard the Alberta legislature amended the Act to change spouse to step-parent which term the court found was meant to include homosexual step-parents. Therefore, in Alberta, homosexuals may adopt their partner's children on the same basis as heterosexuals.

The Alberta legislation is silent on the question of joint adoptions of wards of an agency or other unrelated children and therefore there is no legal impediment to adoption by two persons of the same-sex.

Saskatchewan
In 1998, Saskatchewan passed legislation to permit an application for adoption by "married adults jointly, an unmarried adult, or any other person or persons that the court may allow, having regard to the best interests of the child"[25]. This wording is clearly broad enough to permit joint applications for adoption by same-sex couples. However, step-parent adoption was only possible with respect to the child of the applicant's "spouse"[26]. In 2001, Saskatchewan passed omnibus legislation which, inter alia, changed the definition of spouse in *The Adoption Act* to include "a person with whom the person is cohabiting as spouses"[27] so that common-law partners could apply to adopt their partner's child. It was the government's intention by this amendment to include same-sex common-law couples as well as opposite-sex couples. They feel confident that a court would consider that same-sex couples can cohabit "as spouses" even though traditionally the label of "spouse" has only been available to heterosexual couples. This remains to be tested in court.

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[23] *The Adoption Act*, R.S.B.C. 1996, chapter 5, section 5(1).
[24] *The Miscellaneous Statutes Amendment Act*, S.A. 1999, c.26, s.4, s.25.
[25] *The Adoption Act*, S.S. 1998, c.A-5.2, section 17(2).
[26] Ibid, section 23(1).
[27] *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001*, section 2.

Ontario
Ontario amended its *Child and Family Services Act* to allow for same-sex adoptions as part of its omnibus legislation passed in response to the Supreme Court of Canada case of *M. v. H.* Persons who are permitted to jointly adopt or to adopt the children of their partner include married persons, common-law partners, and same-sex common-law partners. Ontario was criticized for introducing a three tier system of rights for couples because of the hierarchy of status that implies.

Quebec
The Quebec legislation is written in gender neutral terms, both in respect of step-parent adoption and in respect of agency adoptions and has been since 1982. The Act simply provides that "any person of full age may, alone or jointly with another person, adopt a child"[28]. Therefore, sexual orientation is not an issue in terms of adoption applications in that province.

Nova Scotia
The Nova Scotia legislation permits persons to adopt individually and the issue of sexual orientation has no effect on the application. However, the legislation does not allow common-law couples, either same-sex or opposite-sex, to adopt jointly or to apply to adopt the biological child of their partner. In the recent case of *(Birth Registration No. 1999-02-004200) (Re)*[29], one member of a lesbian couple sought to adopt the biological child of her partner and the court concluded that the provisions of the Nova Scotia *Adoption Act* which prevented same-sex couples from applying to adopt were unconstitutional. The result has been that in Nova Scotia, both same and opposite-sex common-law couples are now permitted to adopt a child jointly as a couple and are also permitted to adopt the child of their partner.

New Brunswick
Their *Child and Family Services and Family Relations Act* does not permit a gay or lesbian partner to adopt the child of his or her partner nor does it permit a gay or lesbian couple to adopt jointly.

P.E.I.
Their legislation does not permit a gay or lesbian partner to adopt the child of his or her partner nor does it permit a gay or lesbian couple to adopt jointly.

Newfoundland
Their *Adoption Act* was amended in 1999 to permit both stranger and step-parent adoptions by same-sex couples. The Act now provides that "one adult alone or two adults jointly may apply to a court to adopt a child under this Act", and that "one adult may apply to a court to jointly become a parent of a child with a birth parent of that child" [30].

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[28] *The Adoption Act,* Article 546.
[29] 2001, NSSF24, Supreme Court of Nova Scotia (Family Division).
[30] *The Adoption Act*, S.N.1999 c. A-2.1, section 20.

Northwest Territories
Their legislation does not permit a gay or lesbian partner to adopt the child of his or her partner nor does it permit a gay or lesbian couple to adopt jointly.

Yukon and Nunuvut
No information was available for these two territories.

In summary, it is clear that the majority of the provinces have changed their adoption law and/or practice to include persons in same-sex common-law relationships.

7. Analysis

Although there is some opposition amongst Manitobans to the extension of full adoption rights to same-sex couples, it is the opinion of this writer that, short of invoking the notwithstanding clause which is certainly not recommended, the government has no choice but to amend the legislation to extend these rights. A court case which defended the existing legislation would undoubtedly be lost. Not only would it inconvenience the citizens who are forced to initiate such a challenge in order to obtain benefits which are rightfully theirs in law, but it would likely expose the citizens of Manitoba to a significant costs order.

In amending our *Act*, I do not recommend the use of the legislative model that would permit "any two adults" to adopt. There is clearly some discomfort on the part of some citizens in Manitoba with changing the traditional definition of parents to include two persons in a loving, conjugal relationship who are of the same gender. To extend the definition of parents to two persons who are not in a conjugal relationship, who do not share economic resources or see themselves as life partners, and who perhaps do not even live in the same home, would undoubtedly create even more discomfort. Further, there is no expressed need in Manitoba for this type of adoption. Finally, extending the definition of a parent in this way is not necessary to ensure *Charter* compliance.

I recommend that the legislative model to be used be our present model, extended to fully include homosexual persons in its provisions. The only *Charter* problem is the fact that homosexual persons are excluded from the full benefits of the *Act*. I recommend that the legislation be amended only to the extent necessary to cure this *Charter* problem. This would include permitting homosexual couples who are cohabiting in conjugal relationships of some permanence to be able to jointly adopt a child. It would also include the right of one member of a same-sex couple to apply to adopt the child or extended family member of his or her partner, which child they would have already been parenting.

It could be argued that the broader model of "any two adults" has the benefit of simplicity, but this is not the objective of the legislation in my opinion. Even if it were, the model which I recommend requires surprisingly little change to meet the objective of *Charter* compliance, and it has the benefit of being the model with which Manitobans are already familiar.

The legislative changes required to implement these recommendations are set out below, together with an analysis of their necessity and the reasoning behind the wording proposed. The recommended changes are summarized in part 8 at page 23, "Summary of Recommendations", and the specific wording which I recommend is set out in table form in Schedule V.

***The Adoption Act* – s. 1** - The definition of "extended family" in section 1 would need to be amended to include not only opposite-sex common-law partners, but also same-sex common-law partners. At minimum the requirement that the common-law partner be someone "of the opposite sex" should be deleted. However, I would recommend that the government go further and provide a definition of common-law partner which is inclusive of same-sex couples so that it is made clear in the legislation that adoption by such persons is clearly contemplated.

I would further recommend that the definition of common-law partner, to the extent applicable, be the same as the definition that was used in the 10 pieces of legislation amended by Bill 41 in June, 2001. In my opinion, where possible legislation within Manitoba should be consistent with other legislation affecting the same group of citizens, particularly when that legislation deals with the criteria necessary in order to obtain rights and benefits.

Bill 41 defined a common-law partner as a person who, not being married to the other person, cohabited with him or her in a conjugal relationship for a prescribed period of either 1 year or 3 years depending upon the legislation. The only difference in the definition in the *Adoption Act* would be that instead of requiring the common-law partnership to have subsisted for 1 year or 3 years as set out in those other Acts, the union would simply have to be "of some permanence". This is the test which is applied to opposite-sex common-law partners in the *Adoption Act* and which should therefore apply consistently to all common-law couples, regardless of sexual orientation.

The result would be that the definition of "extended family" in section 1 would include certain family members and their spouses or common-law partners, with common-law partner to be defined as follows:

> ***"common-law partner"** of a person means a person who, not being married to the other person, cohabits with him or her in a conjugal relationship of some permanence.*

Changing the definition of extended family would enable homosexual persons to be able to apply for Division 5 "extended family" adoptions, namely, for the adoption of children who are related by blood or adoption to their partner.

***The Adoption Act* – s. 36** - This section is contained in the part of the *Act* pertaining to the adoption of children who are permanent wards of Child and Family Services. The section would need to be amended by substituting "common-law partners" for the current description of "a man and a woman who are not married but are cohabiting as spouses" as one of the types of joint applications permitted. This would enable homosexual persons who are living in a conjugal relationship of some permanence to jointly apply to adopt a permanent ward under Division 1 of the *Act*. Because Division 3 of the *Act* pertaining to the adoption of a child from another country incorporates the provisions of Division 1, this amendment would open adoptions under Division 3 of the *Act* to homosexual persons as well.

***The Adoption Act* – s. 73(1)** – This section is contained in the part of the *Act* pertaining to the adoption of children that the applicant has in fact been parenting for at least 2 years. The section would need to be amended by substituting "common-law partners" for the current description of "a man and woman who are not married but are cohabiting as spouses" as one of the types of joint applications permitted. This would enable homosexual persons who are living in a conjugal relationship of some permanence to jointly adopt a child that they have been parenting together under Division 4 of the *Act*.

***The Adoption* Act – s. 88** – This section is contained in the part of the *Act* pertaining to the adoption of the child of an applicant's partner. The section would need to be amended by removing the phrase "is cohabiting with the parent of a child and is of the opposite-sex to the parent" from the description of who may apply to adopt under this section and substituting "a common-law partner" of the parent of a child. This would enable homosexual persons to apply to adopt the child of their partner under Division 6 of the *Act*. The descriptive heading for this Division should also be amended to reflect more inclusive language.

***The Adoption Act* - regulations** - The Declaration in Form AA-14, which a cohabiting couple must complete in order to demonstrate their commitment as a couple, should be amended by removing the reference to "husband and wife" and replacing it with a reference to "common-law partners. The important aspect of this declaration is to ensure that joint applicants have a commitment to their relationship on a permanent basis. This change would preserve that objective while making it inclusive for same-sex couples, thereby enabling them to jointly adopt children under the Division 2 private adoption provisions of the *Act*.

***The Vital Statistics Act* - regulations** – The forms would have to be amended to delete the references to "mother" "father" and "husband" and replace them with a gender neutral word like "parent", at least as an option. The following forms need attention:
Form 3 – Request to Register a Child in a Hyphenated or Combined Name;
Form 4 – Registration of Birth (including the instructions to parent or guardian);
Form 4A – Registration of Stillbirth;
Form 6 – Joint Request by Parents;
Form 9 – Request to Amend Registration;
Form 11 - Birth Certificate – paper form; and
Form 16 – Application Form.
This would enable a child to be registered with two parents of the same gender.

8. Summary of Recommendations

Generally:

1. That the right of common –law partners to apply to adopt jointly with a common-law partner, be extended to include same-sex common-law partners.

2. That the right of common-law partners to apply to adopt the biological child or extended family member of an applicant's common-law partner, be extended to include same-sex common-law partners.

***The Adoption Act*:**

3. That the definition of "extended family" in section 1 be amended to include adults who are cohabiting in a conjugal relationship of some permanence with a member of the same sex.

4. That sections 36, 73(1), and 88 be amended to permit a joint application for adoption to be made by same-sex cohabiting partners that are in a conjugal relationship of some permanence.

5. That Form AA-14 in Adoption Regulation A2 – 19/99 be amended to permit a "declaration of commitment" to be made by same-sex cohabiting partners that are in a conjugal relationship of some permanence.

***The Vital Statistics Act*:**

6. That Forms 3, 4, 4A, 6, 9, 11, and 16 to the regulations of the *Vital Statistics Act* be amended to ensure that a birth certificate can register either two parents of the same gender if appropriate.

Schedule I

Terms of Reference
An Opinion Respecting Persons in Common-Law Relationships

To: The Honourable A. C. Hamilton
Jennifer A. Cooper, Q.C.

Government seeks your advice on a series of issues respecting persons in common-law relationships. The Province of Manitoba maintains a policy of non-discrimination in the application of provincial statutes. Concerns recently have been raised that a number of statutes may need to be addressed in terms of their fairness to and potentially discriminatory effect against members of the gay and lesbian community in Manitoba.

In the development of your advice, you have full access to all relevant employees within the Department of Justice (Manitoba), should you find that such access may be helpful to you in providing advice to government. You may also consult with experts in relevant areas of the law. Any legislation resulting from your advice will result in full public hearings which will permit any member of the public to address the issues under consideration by the legislature. For that reason, public hearings are unnecessary at this stage, and are not contemplated under these terms of reference. However, you may consult with interested individuals or groups, if you feel it would be helpful to do so. It is important to emphasize that proceeding with dispatch and in a focused way is a critical element of these terms of reference.

Your advice should be provided to me by or before the 31st of December, 2001. To ensure a transparent process, and public accountability, these terms of reference and any subsequent amendments that may be requested by you are, and will continue to be, publicly available. Your advice will be made public as well.

The issues for which government seeks your advice are as follows:

Adoption

1. As they apply to adoption applications by same sex common-law couples, are the provisions in Manitoba's *Adoption Act* likely to survive a *Charter* challenge?

2. The best interests of the child is the paramount consideration in any adoption proceeding. If Manitoba's *Adoption Act* is not likely to survive a *Charter* challenge, review legislative approaches in other Canadian jurisdictions, identify models (legislative approaches) which would comply with the *Charter* and recommend a preferred approach.

Conflicts of Interest and Protection of the Public Interest

3. A number of Manitoba statues contain conflict of interest provisions, including those affecting public officials. Are amendments recommended to these conflict of interest provisions and other provisions to protect the public interest to include persons in common-law relationships, where those persons are currently excluded? If so, what approach is recommended?

4. One or both persons in a same sex common-law relationship may not be open with family, friends, co-workers and others about their sexual orientation. Some persons in opposite sex common-law relationships may also have concerns about open disclosure. If amendments to conflict of interest provisions are recommended, then how should these changes be reconciled with the privacy rights/interests of both persons in a common-law relationship?

Legislation dealing with Property Interests

5. Taking into account legislative developments across Canada, particularly in Saskatchewan and Nova Scotia, recommend an approach to addressing rights and duties of common-law partners in legislation that gives married spouses an interest in and right to inherit/share their spouse's property.

Gord Mackintosh
Minister of Justice
Attorney General
June 19, 2001

Schedule II

Notice Inviting Submissions

The Review Panel on Common-Law Relationships in Manitoba invites written submissions.

The review panel on common-law relationships invites you to forward written submissions concerning the three areas of Manitoba legislation it has been asked to review:

- What, if any, changes are needed to the legislation concerning the interests and rights of same and opposite-sex common-law partners to inherit or share in their partner's property;
- What, if any, amendments are needed to Manitoba's conflict of interest provisions to require disclosure of conflicts arising from same and opposite-sex common-law partnerships; and
- What, if any, changes should be made to Manitoba's Adoption Act to permit adoption by same-sex partners.

Please send your written submission to:

5th Floor, 373 Broadway
Winnipeg, Manitoba
R3C 0T9

Your written submission must be received no later than August 15, 2001. If you are writing as an individual and wish your submission to be kept confidential, please advise and your privacy will be protected to the extent possible by law.

Hon. A.C. Hamilton
Jennifer A. Cooper, Q.C.

Éditique 2592
Ad size 3 5/16" x 90 agates
Output July 9, 2001

Le Comité de révision sur les unions de fait au Manitoba invite le public à envoyer des mémoires.

Le Comité de révision sur les unions de fait vous invite à lui faire parvenir des mémoires concernant les trois domaines de la législation manitobaine qu'il est chargé de réviser :

- possibilités de devoir apporter des changements aux textes législatifs concernant les droits des conjoints de fait de même sexe et de sexe opposé à hériter des biens de leur conjoint de fait, ou à les partager ;
- possibilité de devoir apporter des modifications aux dispositions des textes législatifs manitobains relatives aux conflits d'intérêt qui exigent la divulgation de conflits pouvant émaner des unions de fait de même sexe et de sexe opposé ;
- possibilité de devoir apporter des modifications à la Loi sur l'adoption du Manitoba pour permettre aux partenaires de même sexe d'adopter des enfants.

Veuillez envoyer vos mémoires à :

373, Broadway, 5e étage
Winnipeg (Manitoba)
R3C 0T9

Vous devez nous faire parvenir vos mémoires d'ici le 15 août 2001. Si vous envoyez un mémoire à titre de particulier, et si vous désirez qu'il reste confidentiel, veuillez nous en informer. Votre vie privée sera alors protégée dans la mesure permise par la loi.

Monsieur le juge A.C. Hamilton
Maître Jennifer A. Cooper, c.r.

Éditique 2592
Ad size 4" x 90 agates
Output July 10, 2001

List of Manitoba Newspapers
Where the Notice was Placed

1. Altona R.R. Valley Echo
2. Baldur Gazette
3. Beausejour Review
4. Beausejour Clipper Weekly
5. Birtle Eye Witness
6. Boissevain Recorder
7. Brandon Sun
8. Carberry News-Express
9. Carman Valley Leader
10. Cartwright Southern MB Review
11. Dauphin Herald
12. Deloraine Times & Star
13. Emerson Southeast Journal
14. Flin Flon Nth Visions Gazette
15. Flin Flon Reminder
16. Gladstone Enterprise
17. Glenboro Gazette
18. Grandview Exponent
19. Hamiota Echo
20. Interlake Spectator
21. Killarney Guide
22. La Liberte (French)
23. Lac du Bonnet Leader
24. Leaf Rapids Northern Star
25. Manitou Western Canadian
26. Melita New Era
27. Minnedosa Tribune
28. Morden Times
29. Morris Scratching River Post
30. Neepawa Banner
31. Neepawa Press
32. Pilot Mound Sentinel Courier
33. Portage Daily Graphic
34. Portage Herald Leader Press
35. Reston Recorder
36. Roblin Review
37. Rossburn Review
38. Russell Banner
39. Selkirk Journal
40. Shilo Stag
41. Shoal Lake Star
42. Snow Lake News
43. Souris Plaindealer
44. Steinbach Carillon
45. Stonewall Argus/Teulon Times
46. Swan River Star & Times
47. The Lance (French)
48. The Pas Opasquia Times
49. Thompson Citizen
50. Thompson Nickel Belt News
51. Treherne Times
52. Virden Empire Advance
53. Winkler Times
54. Winnipeg River Echo
55. Winnipeg Free Press
56. Winnipeg Sun

Schedule III

Written Submissions

From Individuals

1. M. Adam, Winnipeg.
2. Crawford & Jody Bartel, Beausejour.
3. Robert L. Bedard, Selkirk.
4. Karen Busby, Professor, Faculty of Law, University of Manitoba.
5. Kerry Cazz orla, Winnipeg.
6. Mary Dyck, Altona.
7. Jocelyn Giesbrecht, Altona.
8. Harold Jantz, Winnipeg.
9. Darlene Kernot, Winnipeg.
10. Victoria E. Lehman, Attorney, Winnipeg.
11. Karen P. LeMay, Lorette.
12. Elliot Leven, Attorney, Winnipeg.
13. Sally Naumko, Winnipeg.
14. Tim and Betty Neufeld, Lowe Farm.
15. W. Penner, Morden.
16. Krista Piche, Winnipeg.
17. Tony Riley, Strathclair.
18. Sylvia Smith, Selkirk.
19. Noreen Stevens & Jill Town, Winnipeg.
20. Patricia Strong, Ste. Anne.
21. Margaret Temple, Winnipeg.
22. Bernie Thiessen, Winkler.
23. Confidential submission.
24. Confidential petition.
25. Confidential petition.

From Organizations

26. Adoption Options (Manitoba) Inc.
27. EGALE Canada.
28. Focus on the Family (Canada).
29. Manitoba Association of Women and the Law.
30. Manitoba Bar Association, Gay & Lesbian Issues Section.
31. Manitoba Human Rights Commission.
32. Office of the Children's Advocate.
33. Public Interest Law Centre.
34. Rainbow Resource Centre.
35. REAL Women of Canada.
36. Winnipeg Child and Family Services, Adoption Program.
37. Winnipeg Land Titles Office.

Schedule IV

Consultations

1. Janet Baldwin, Chairperson, Manitoba Human Rights Commission.
2. Kristine Barr, School Trustee, Winnipeg School Division No. 1.
3. Debra Beauchamp, Policy Analyst, Manitoba Human Rights Commission.
4. Aaron Berg, General Counsel, Manitoba Justice (counsel to Manitoba Human Rights Commission).
5. Bob Boulet, Adoption Supervisor, Winnipeg Child & Family Services.
6. Karen Busby, Professor, Faculty of Law, University of Manitoba.
7. Marianne Crittenden, Winnipeg.
8. Barry Effler, Deputy Registrar, Winnipeg Land Titles Office.
9. John Fisher, Executive Director, EGALE (Canada).
10. Rob Hilliard, President, Manitoba Federation of Labour.
11. Sarah Inness, Co-chair, Gay & Lesbian Issues Section, Manitoba Bar Association.
12. Garry Johnson, Adoption Supervisor, Winnipeg Child and Family Services.
13. Lori Johnson, School Trustee, Winnipeg School Division No. 1.
14. Gwendolyn Landolt, National Vice-President, REAL Women.
15. Manitoba Association of Women and the Law.
16. Michael Law, Sexual Orientation and Gender Identity Conference, Canadian Bar Association.
17. Elliot Leven, Rainbow Resource Centre.
18. Harry Mesman, Manitoba Federation of Labour.
19. Janet Mirwaldt, Children's Advocate, Office of the Children's Advocate.
20. Herbert Rempel, Board Member, Adoption Options (Manitoba) Inc.
21. Derek Roguski, Director of Research, Focus on the Family (Canada).
22. Jim Rondeau, Member of the Manitoba Legislative Assembly for Assiniboia.
23. Dennis Schellenberg, Acting Director, Manitoba Family Services.
24. Chris Vogel, Winnipeg.
25. Valerie Wadephul, Winnipeg.
26. Byron Williams, Attorney, Public Interest Law Centre.

Schedule V

Table of Recommended Changes to *The Adoption Act*

Current Act:	should read	Proposed Act:
Definitions 1 In this Act **"extended family"** includes, in addition to the persons in the definition of "family", aunts, uncles and cousins of a birth parent, a spouse of any of those persons, and any unmarried adult who is cohabiting in a relationship of some permanence with any of those persons of the opposite sex who is an unmarried adult;		**Definitions** 1 In this Act **"extended family"** includes, in addition to the persons in the definition of "family", aunts, uncles and cousins of a birth parent, and a spouse or common-law partner of any of those persons, ~~and any unmarried adult who is cohabiting in a relationship of some permanence with any of those persons of the opposite sex who is an unmarried adult;~~ **"common-law partner"** of a person means a person who, not being married to the other person, cohabits with him or her in a conjugal relationship of some permanence;
Application for placement **36** Where (a) a husband and wife; (b) a man and a woman who are not married but are cohabiting as spouses; or (c) a single adult; desire to have a child who is a permanent ward placed in their home with a view to adopting that child, they may make an application to the child and family services agency having jurisdiction in the areas where they reside for that purpose.		**Application for placement** **36** Where (a) a husband and wife; (d) ~~a man and a woman who are not married but are cohabiting as spouses~~ common-law partners; or (e) a single adult; desire to have a child who is a permanent ward placed in their home with a view to adopting that child, they may make an application to the child and family services agency having jurisdiction in the areas where they reside for that purpose.

Current Act:	should read	Proposed Act:
Application **73(1)** An application for an order of adoption may be made in the prescribed form (a) jointly by a husband and wife or by a man and woman who are not married but are cohabiting as spouses, where at the time the application is made (i) they are jointly caring for and maintaining the child, and (ii) either applicant has had care and control of the child and has maintained the child for a least two consecutive years; or (b) by a person who at the time the application is made (i) is caring for and maintaining the child; and (ii) has had care and control of the child and has maintained the child for at least two consecutive years.		**Application** **73(1)** An application for an order of adoption may be made in the prescribed form (a) jointly by a husband and wife or by ~~a man and woman who are not married but are cohabiting as spouses~~ common-law partners where at the time the application is made (i) they are jointly caring for and maintaining the child, and (ii) either applicant has had care and control of the child and has maintained the child for a least two consecutive years; or (b) by a person who at the time the application is made (i) is caring for and maintaining the child; and (ii) has had care and control of the child and has maintained the child for at least two consecutive years.

Current Act:	should read	Proposed Act:
Division 6 ADOPTION BY PERSON WHO HAS MARRIED CHILD'S PARENT		**Division 6** ADOPTION BY SPOUSE OR COMMON-LAW PARTNER OF ~~PERSON WHO HAS MARRIED~~ CHILD'S PARENT
Application **88** A person who (a) is married to the parent of a child; or (b) is cohabiting with the parent of a child and is of the opposite sex to the parent; may, together with that parent or alone but with the consent of that parent, apply to the court in the prescribed form to adopt the child if the child is living with the applicants and is being cared for by them.		**Application** **88** A person who (c) is married to the parent of a child; or (d) is ~~cohabiting with~~ a common-law partner of the parent of a child ~~and is of the opposite sex to the parent~~; may, together with that parent or alone but with the consent of that parent, apply to the court in the prescribed form to adopt the child if the child is living with the applicants and is being cared for by them.
Regulation A3-19/99 **Form AA-14** **2.** We have been living together as though husband and wife continuously since the ____ day of _____, _____ and we are currently living together and intend to continue to live together as though husband and wife on a permanent basis.		**Regulation A3-19/99** **Form AA-14** **2.** We have been living together as ~~though husband and wife~~ common-law partners continuously since the ____ day of _____, _____ and we are currently living together and intend to continue to live together as ~~though husband and wife~~ common-law partners on a permanent basis.